

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and Registrar's orders.	Notes, of Court's orders or	Office Coram, orders or	Court's or Judge's orders.
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SECOND APPEAL NO. 490 OF 2015
WITH CA/18084/2010 IN SA/490/2015

SYED GAFOOR SYED KASAMBHAI L.RS. SYED SALIM SYED
GAFOORBHAI AND ORS
VERSUS
SUBHANBEE SYED CHOTUBHAI AND ORS

Advocate for Appellants : Mr. Shaikh Mujtaba Gulam
Mustafa.

Advocate for Respondent Nos.1,2 & 4: Mr. P. N. Kalani.

CORAM: T. V. NALAWADE, J.
DATED: 7th MARCH, 2016.

PER COURT:

1. The appeal is filed by original plaintiff of Regular Civil Suit No.7 of 2001 which was pending in the Court of Civil Judge, Junior Division, Vaijapur, District Aurangabad. In the suit the decree of declaration was given and even perpetual injunction was given in favour of the present Appellants by the trial Court. This decision is set aside by the first Appellate Court, District Judge No.3, Aurangabad in Regular Civil Appeal No.305 of 2006 and the suit is dismissed. In the trial Court, counter claim was filed for

relief of possession of the suit property. This relief was refused by trial Court and in appeal filed by the original defendants, this relief is granted. Both the sides are heard.

2. The suit was filed in respect of entire area of CTS No.581 situated within the limits of village Panchayat, Dhondalgaon. It is the case of plaintiffs that Plaintiff No.1 Syed Gafoor and his elder brother Syed Chotu were living together under the same roof and they were making earning together. Defendant No.1 is the widow of said Syed Chotu and defendant Nos.2 and 3 are issues of defendant No.1. The remaining defendant is purchaser from Defendant Nos.1 to 3.

3. It is the case of plaintiffs that till the year 1970 plaintiff No.1 and Chotu were living together and after that they started living separate. It is contended that the suit property was purchased by plaintiff No.1 and Chotu jointly about 40 years prior to the suit and there they had lived together. It is contended that after separation, suit property was given to the share of plaintiff No.1 by Syed Chotu and since then plaintiffs are enjoying the suit property as the owner.

4. It is the case of plaintiff No.1 that he executed

registered sale deed in favour of his successors, other plaintiffs on 14th August, 2000. It is contended that plaintiffs have learnt that defendant Nos.1 to 3 have sold the suit property under sale deed dated 16th August, 2000 in favour of defendant No.4. It is contended that defendant Nos.1 to 3 have no right in the suit property but they have executed such sale deed. It is contended that by using such sale deed, the defendant No.4 is likely to take possession of the suit property from plaintiffs. Plaintiffs had claimed the relief of declaration that they are the owners of the suit property and they had claimed the relief of declaration that the sale deed executed in favour of Defendant No.4 by Defendant Nos.1 to 3 is null and void. Relief of permanent injunction was also claimed to protect the possession.

5. Defendant Nos.1 to 4 filed joint written statement. They contended that the suit property was belonging to Chotu and it was purchased by him alone. They denied that the suit property was given to the share of plaintiff No.1 by Syed Chotu. It is their case that defendant No.1 has created some false record by joining hands with City Survey Officers and he has got entered his name in City Survey Office as owner of CTS No.581. It is contended that

separate CTS numbers were created subsequently to create complications when under one sale deed the property was purchased by Syed Chotu. It is contended that right from the date of purchase i.e. 24th July, 1958 Syed Chotu was in possession of the property and he made the construction on the open space by spending his own income. Initially they had claimed that they were in possession of the property. Then, they filed counter claim and prayed for relief of declaration on the basis of the sale deed of 1958 and they prayed for relief of possession of the suit property which was initially numbered as CTS No.581 and then it was numbered as CTS No.582. To this counter claim, written statement was filed by plaintiffs and they denied the aforesaid contentions.

6. Issues were framed on the basis of aforesaid pleadings. Plaintiff No.1 examined himself and gave evidence as per aforesaid contentions. He gave evidence that in the year 1970 when city survey of the property was done in the village, Chotu gave a statement and gave the suit property in partition to him. He has given evidence that from his own income and income of Chotu the property was purchased. The property had not come from father

and due to sale deed property was vesting in Chotu.

7. No explanation was given by plaintiff No.1 as to why only in the name of Chotu the property was purchased and till the city survey was done the property remained in the name of Chotu. His evidence in cross examination shows that there was some property which had come from the father to plaintiff Chotu and to other brothers of plaintiff and that property was partitioned about 24 years prior to the date of deposition. The suit property was not shown in that partition and no share was given to others in the suit property. He has admitted that Chotu was doing business and he had purchased properties at different places. He had purchased agricultural land at Dhondalgaon. He had purchased one more house property. The evidence of plaintiff shows that he admits that some property purchased by Chotu at other place was sold by him during his life time. He admits that in the record of village Panchayat initially the name of only Chotu was entered.

8. The evidence of plaintiff No.1 shows that he does not know the consideration for which the suit property was purchased in the year 1958. He has shown ignorance as to why two portions of the house were created and one was

of 99 sq.mtrs. and the other was of 284.2 sq.mtrs. He admits that the mutations made in his favour were challenged by the defendant Nos.1 to 3 and in the said proceeding the authority decided in favour of defendant Nos.1 to 3.

9. There is city survey record showing that City Survey No.581 having size of 284.2 sq.mtrs. was first entered in the name of Syed Chotu. Said document is at Exhibit-49. Under the same entry, the area of only 99 sq.mtrs. was entered in the name of Syed Gafoor, plaintiff No.1. The first entry was made in the year 1970. It appears that after making of that entry, another record was created, Exhibit-39, to show that Syed Gafoor got City Survey No.581 having size 284.2 sq.mtrs. Then, one more property Card of property No.582 was created having size 99 sq.mtrs. and that was made in the name of Syed Chotu. At present entire property bears CTS No.582. Thus, the initial record created by City Survey Office was totally changed and different property cards were prepared. When the property was purchased by Syed Chotu in the year 1958 and he was the absolute owner of this property, there was no question of giving share to plaintiff No.1 by Syed Chotu at least by giving application to C.T.S. Office. The original

sale deed is produced by defendant Nos.1 to 3 at Exhibit-69 and there is no dispute that the sale deed was executed in favour of Chotu only.

10. The plaintiff has come with the case that he was living in the suit house with Chotu and so his possession was joint with Chotu. It appears that subsequently Chotu started living separate and on the date of suit the successors of Chotu were living in staff quarters. The aforesaid city survey record shows that there is something fishy and the record was created to show that the title passed in respect of most of the portion in favour of plaintiff No.1. The title could not have passed by creation of such record as the sale deed was executed in favour of Chotu and it was not in favour of plaintiff No.1 and Chotu. It was not the property of father of plaintiff No.1 and Chotu and so unless there was registered document of conveyance no title could have passed in favour of Plaintiff No.1 and then to his successors.

11. In view of the aforesaid circumstances, it was not possible to give any relief in favour of plaintiff. There was no other alternative than to give the relief claimed by defendant Nos.1 to 4. They are owners. The Courts below

have considered the aforesaid material and the findings given by them are on questions of facts. No substantial questions of law as such are involved in the matter.

12. In the result, the appeal stands dismissed.

In view of final disposal of the appeal itself, Civil Application No.18084 of 2010 for stay does not survive further and the same stands disposed of accordingly.

(T. V. NALAWADE, J.)

Dt.07/03/2016.
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